

U.S. District Court Judge Katherine Polk Failla
United States District Court for the Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007

MEMO ENDORSED

by ECF (Motion)

February 16, 2025

Re: 1:24-cv-08210-KPF, Mannion v. Kern – Request for Adjournment

Dear Judge Failla:

We are co-counsel for Plaintiff Jonathan Mannion in the referenced action. We are requesting a short adjournment of the Initial Pretrial Conference presently scheduled for February 26, 2025 to allow the Defendant time to retain counsel and respond to the Complaint. The background to this request is as follows:

This matter arises from a Digital Millennium Copyright Act (“DMCA”) takedown request of a listing posted by a user of the e-commerce platform Etsy which reproduced our client’s copyrighted work without license or permission. The Etsy user provided a counternotice under 17 U.S.C. § 512(g)(2)(B) which identified themselves as Ms. Kern, set forth an address, and a sworn statement under penalty of perjury that they had a ‘good faith belief that the material was removed or disabled by mistake or because of misidentification of the material.’ Under the provisions of the DMCA, this counternotice necessitated the filing of this action so as to prevent Etsy from making the listing publicly available again. 17 U.S.C. § 512(g)(2)(C).

This case was commenced by the filing of a Complaint on October 29, 2024 (Docket #1). Plaintiff unsuccessfully attempted service at the address set forth in the DMCA Counternotice. Plaintiff then engaged a reputable private investigator to uncover the Defendant’s present address, and on December 23, 2024, a copy of the Summons and Complaint was personally served on Ms. Kern. Ms. Kern subsequently called our co-counsel, Mr. Joel Hecker, contending that she had been misidentified and was not responsible for the infringing activity on Etsy. Mr. Hecker agreed to suspend her time to respond to the Complaint until Plaintiff could perform additional due diligence to assure ourselves as to the identity of the Defendant.

To that end, Plaintiff issued a subpoena under Fed. R. Civ. P. 45 to Etsy, Inc. on January 14, 2025 requesting further information as to the Etsy user at issue, including the name associated with the bank account to which Etsy paid over money from sales of infringing

goods, and the name appearing on any credit cards used to pay Etsy fees. On February 11, 2025, Plaintiff received information from Etsy that confirmed that Ms. Kern's name was associated with both the bank account to which Etsy paid over money from sales of infringing goods, and two credit cards used to pay Etsy fees.

We accordingly notified the Defendant that Plaintiff was no longer willing to delay this action. Defendant briefly retained counsel, but approximately 24 hours later we were informed that counsel no longer represented Defendant. Ms. Kern has asked for additional time to retain counsel and respond to the Complaint; we have agreed to give her until March 10, 2025 to do so.

There is presently an Initial Conference scheduled for February 26, 2025 (Docket #8); however, we respectfully request adjournment of that conference until March 17, 2025 or such other time as suits the Court, so as to give Ms. Kern the agreed-upon time to retain counsel and respond to the Complaint and, in the event that she does not timely respond, to allow the Plaintiff time to file a Request for a Certificate of Default prior to the conference. We believe that this request is aligned with the interest of judicial economy and efficiency, so as not to waste the Court's time if the Defendant does not enter an appearance.

We also respectfully request that the February 20, 2025 deadline for filing a Case Management Plan and Scheduling Order be extended in accordance with Your Honor's Individual Rules of Practice.

This is the first request for adjournment in this matter. We are unable to meet and confer with opposing counsel as no counsel has made an appearance in this matter on behalf of the Defendant. We have, however, notified the Defendant that we would be making this request, and will serve a copy of this letter motion on the Defendant by both email and first-class mail.

Sincerely,

ROCKSTONE LEGAL LLC



BY: _____
Sarah Hsia

cc: Joel Hecker, Esq. (by ECF)
Failla_NYSDChambersnysd.uscourts.gov (by email post ECF filing)
Amanda Kern (by email and first-class mail)

Application GRANTED. The conference scheduled for February 26, 2025, is hereby ADJOURNED to **March 26, 2025, at 11:00 a.m.**

The Clerk of Court is directed to terminate the pending motion at docket entry 10.

Dated: February 18, 2025
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE